U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Nebraska Service Center Date: FEB 09 2000

IN RE: Applicant: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under § 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(9)(A)(iii)

IN BEHALF OF APPLICANT:

[redacted]

Public Copy

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

For Terrance M. O'Reilly, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jordan who was admitted to the United States on December 3, 1991 as a nonimmigrant visitor with authorization to remain until June 3, 1992. The applicant remained beyond that date without Service authorization. A notice to appear dated December 1, 1997 was served on the applicant ordering him to appear for hearing on February 24, 1998. The applicant failed to appear and was ordered removed *in absentia*. Therefore, the applicant is inadmissible under § 212(a)(9)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(9)(A). The applicant left the United States at his own expense on October 3, 1998. The applicant is the beneficiary of an approved fiancé(e) visa petition. He seeks permission to reapply for admission under § 212(a)(9)(A)(iii), 8 U.S.C. 1182(a)(9)(A)(iii), to return to the United States.

Citing Matter of J-F-D-, 10 I&N Dec. 694 (Reg. Comm. 1963), and Matter of Martinez-Torres, 10 I&N Dec. 776 (Reg. Comm. 1964), the director determined that the applicant is mandatorily inadmissible to the United States under § 212(a)(6)(B) of the Act, 8 U.S.C. 1182(a)(6)(B), for having failed to attend his removal proceeding and no waiver is available for such ground of inadmissibility within five years of such alien's subsequent departure. The director then denied the application accordingly.

On appeal, counsel states that the director failed to consider the condition of the applicant's health. Counsel states that the applicant's U.S citizen fiancée will suffer as a result of the director's decision. The record is devoid of medical or other records regarding the health of the applicant.

Section 212(a)(6)(B)-FAILURE TO ATTEND REMOVAL PROCEEDING.-Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's the alien's inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.

Section 212(a)(6)(B) of the Act was amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). According to the reasoning in Matter of Soriano, Interim Decision 3289 (BIA, A.G. 1996), the provisions of any legislation modifying the Act must normally be applied to waiver applications adjudicated on or after the enactment date of that legislation, unless other instructions are provided. Section 212(a)(6)(B) of the Act became effective on April 1, 1997.

Matter of Martinez-Torres, held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States and no purpose would be served in granting the application.

[redacted]

The record reflects that the applicant is inadmissible to the United States under § 212(a)(6)(B) of the Act for failure to attend his removal proceeding and without reasonable cause. No waiver of such ground of inadmissibility is available for an alien seeking admission to the United States within five years of such alien's subsequent departure or removal. Therefore, the favorable exercise of discretion in this matter is not warranted.

In discretionary matters, the applicant bears the full burden of proof. See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957); Matter of Ducret, 15 I&N Dec. 620 (BIA 1976). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.